

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

## CLASS ACTION

**Defendants.**

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA'S  
MOTION TO MODIFY PRETRIAL SCHEDULING ORDER  
WITH REQUEST FOR EXPEDITED CONSIDERATION**

LTP-00000007

1189

Lead Plaintiff The Regents of the University of California, by counsel and pursuant to Rule 16 of the Federal Rules of Civil Procedure, hereby files this Motion to modify the Court's Pretrial Scheduling Order. The Regents respectfully requests that the Court consider this Motion on an expedited basis to preserve litigant and judicial resources that might otherwise be expended in the event the parties attempt to adhere to remaining deadlines in the Pretrial Scheduling Order.

## **I. INTRODUCTION**

On February 28, 2002, the Court entered a Pretrial Scheduling Order providing for consolidated complaints to be filed by April 1, 2002, motions to dismiss to be fully briefed by June 17, 2002, class certification to be fully briefed by December 2, 2002, and fact discovery to be completed by April 1, 2003, with trial set for December 1, 2003. The parties have endeavored to adhere to the Court's schedule. However, the restrictions imposed on this litigation by the automatic discovery stay of the Private Securities Litigation Reform Act, at this time, make certain of the deadlines in the Court's Pretrial Scheduling Order unattainable.

Indeed, because of the effect of the automatic discovery stay, the Bank Defendants in this case recently moved for modification of the Court's Pretrial Scheduling Order to allow further time for class discovery. Lead Plaintiff opposed the Bank Defendants' Motion because of (among other things) concern that the requested modification could jeopardize Lead Plaintiff's ability to adhere to remaining deadlines in the Pretrial Scheduling Order, including the December 1, 2003 trial date. The Court granted the Bank Defendants' Motion by its Order dated October 28, 2002, and stated that a "new schedule" would be established when defendants' motions to dismiss are resolved. It is unclear to Lead Plaintiff which, if any, of the deadlines that remain in the Pretrial Scheduling Order may be relied upon.

Currently, the Pretrial Scheduling Order provides that the "[d]eadline to join new parties or to file third party complaints or cross complaints/claims" is January 2, 2003. Lead Plaintiff cannot adhere to this deadline because there has been no formal discovery to enable The Regents to verify and/or buttress with evidentiary facts potential claims against new parties. Moreover, for most, if not all parties, including Lead Plaintiff, this Court's decision on the pending motions to dismiss will affect the decision regarding filing additional claims. Lead Plaintiff requests that the Pretrial

Scheduling Order be modified to extend the deadline to join new parties to a reasonable period following the initiation of discovery in this action. In the interest of preserving both litigant and judicial resources, an adequate period of time must be provided to determine if claims against other parties should be filed or not.

## **II. GOOD CAUSE EXISTS FOR MODIFYING THE COURT'S PRETRIAL SCHEDULING ORDER**

Rule 16 of the Federal Rules of Civil Procedure states that a scheduling order may be modified "upon a showing of good cause and by leave of the district judge." Fed. R. Civ. P. 16(b)(6). Given that scheduling orders, by mandate, are to be entered early in the litigation, the standard for modifying a scheduling order is appropriately lenient. *See* Fed. R. Civ. P. 16(b), Advisory Committee's Note (1983 amendment). Good cause exists for modifying the Court's Pretrial Scheduling Order. Under the current schedule there is inadequate time for Lead Plaintiff to determine if claims should be brought against other parties or not.

Lead Plaintiff has investigated potential claims against parties presently unnamed in this action. To preserve litigant and judicial resources, The Regents seeks to determine whether to bring those claims only after further investigation and the initiation of formal discovery. For example, Lead Plaintiff has been unable to determine the identity of certain parties which it believes are culpable, and likely will not be able to identify those parties until after discovery pertaining to (among other things) offshore transactions engaged by Enron affiliates. The discovery stay precludes Lead Plaintiff from obtaining such discovery. As the Court has recognized, this case is extraordinarily complex and presents issues of first impression.

Without a reasonable period of time following the Court's ruling on the pending motions to dismiss and lifting of the discovery stay, Lead Plaintiff cannot, in all prudence, adhere to the Court's deadline to join new parties. Consequently, The Regents requests that the Court modify the Pretrial Scheduling Order accordingly.

## **III. CONCLUSION**

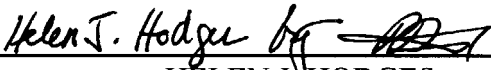
It is critical that Lead Plaintiff be afforded a reasonable opportunity to determine whether to join new parties in this action. The Regents requests that the deadline to join new parties in the

Court's Scheduling Order be modified to permit the joining of new parties in a reasonable period of time following the Court's ruling on the pending motions to dismiss and lifting of the discovery stay.

DATED: December 12, 2002

Respectfully submitted,

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DECLARATION OF SERVICE BY WEBSITE AND UPS

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 401 B Street, Suite 1700, San Diego, California 92101.

2. That on December 12, 2002, declarant served the THE REGENTS OF THE UNIVERSITY OF CALIFORNIA'S MOTION TO MODIFY PRETRIAL SCHEDULING ORDER WITH REQUEST FOR EXPEDITED CONSIDERATION by posting to the website or UPS overnight to the parties as indicated on the attached Service List, pursuant to the Court's August 7, 2002 Order Regarding Service of Papers and Notice of Hearings.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of December, 2002, at San Diego, California.

  
DEBBIE GRANGER

The Service List

May be Viewed in

the Office of the Clerk